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LYN FRICKER
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8 MONTANA TWENTIETH JUDICIAL DISTRICT COURT, LAKE COUNTY

9 LAKE COUNTY,

10 PLAINTIFF,

11 vs.

12 STATE OF MONTANA,

13 DEFENDANT.

) Dept. No.: 2001

) Cause No.: DV-22-117

) COMPLAINT

14 COMES NOW, Plaintiff Lake County, by and through its attorneys of
15 record, Lance P. Jasper and Robert T. Bell of Reep, Bell & Jasper, P.C.,
16 and for its Complaint against Defendant State of Montana alleges and
17 states as follows:

18 PARTIES

19 1. Plaintiff Lake County ("Lake County") is a local Montana
20 government unit as defined by the Montana Constitution, Art. 11, § 1.

2. Defendant State of Montana (the "State") is a sovereign state.

1 Within its boundaries lies the local government unit known as Lake County.

2 3. The subject claim arises out of events occurring in Lake
3 County, Montana. Pursuant to Mont. Code Ann. § 25-2-126, venue is
4 proper in this Court.

5 BACKGROUND

6 4. The Flathead Indian Reservation (the "Reservation") is located
7 within the State of Montana, principally within the physical boundaries of
8 Lake County.

9 5. The Reservation is home to the Confederated Salish and
10 Kootenai Tribes, a combination of the Bitterroot Salish, Upper Pend
11 d'Oreille and Kootenai tribes ("CSKT"). Recent estimates show there are
12 approximately 7,750 enrolled CSKT members, about 5,000 of whom live on
13 or near the Reservation.

14 6. The history of Lake County and the Reservation is inextricably
15 intertwined. The Reservation as it currently exists was created by the
16 Hellgate Treaty of 1855, July 16, 1855, and was subsequently ratified by
17 the United States Congress on March 8, 1859 and proclaimed on April 18,
18 1859 ("Hellgate Treaty"). Congress made Montana a territory several years
19 later, in May 1864. Montana became a state in 1889. Lake County as it
20 currently exists was established August 11, 1923.

1 7. As a local government unit within the State of Montana, Lake
2 County's self-government is subject to any Montana law directing or
3 requiring a local government or any officer or employee of a local
4 government to carry out any function or service. See, e.g., Mont. Code
5 Ann. § 7-1-114(f) and its predecessors.

6 8. In 1953, Congress enacted Public Law 280 to authorize the
7 transfer of portions of criminal jurisdiction over "Indians in the areas of
8 Indian Country" from the federal government to the states in which the
9 reservations existed.

10 9. In 1963, the Montana Legislature enacted legislation
11 authorizing Pub. L. 280 jurisdiction in Montana. During the course of the
12 hearing on the legislation, an official tribal delegate spoke, describing the
13 situation thus:

14 I am a member of the Flathead Tribe and allotted on that
15 reservation and authorized to appear behalf of the
16 Committee and speak in support of House Bill No. 55. We
17 would like to call attention of the Committee that there has
18 been in effect a 'no mands land' as far as law and order
19 are concerned. The Federal Government has limited itself
20 to the ten major crimes and beyond that have done
nothing. The state, counties and others cannot assume
jurisdiction and will not because they don't have the legal
authority. It has fallen on the Tribal Council to spend \$30 to
\$40 thousand per year attempting to provide some
semblance of law and order among its people.

* * *

1 Montana on our reservation is crossed by two of the
2 national highways, 10 and 93. We have problems of law
3 and order with regard to highway patrol. Serious problems
4 lie with our juvenile delinquents and there is no court to
take them. Also, there are considerable problems with
welfare matters. On the Flathead Reservation, we urge
that the bill be passed.

5 (Tribal Testimony of Steve Demures from January, 1963 in the Montana
6 House Judiciary Committee).

7 10. Ultimately, the Legislature passed legislation by which the State
8 of Montana agreed, pursuant to Public Law 280, to assume criminal
9 jurisdiction over Indians and Indian territory of the Flathead Indian
10 Reservation. The legislation explicitly stated, "The state of Montana hereby
11 obligates and binds itself to assume, as herein provided, criminal
12 jurisdiction over Indians and Indian territory of the Flathead Indian
13 reservation and country within the state in accordance with the consent of
14 the United States given by the act of August 15, 1953 (Public Law 280,
15 83rd congress, 1st session)." Laws 1963, ch. 81, § 1 (presently codified at
16 Mont. Code Ann. § 2-1-301(1) (2021)). Thus, it became the State of
17 Montana's obligation to assume criminal jurisdiction over Indians and the
18 Indian territory of the Reservation.

19 11. In 1965, the CSKT passed a tribal ordinance, Ordinance 40-A,
20 agreeing to come under Pub. L. 280 jurisdiction.

1 12. Since 1965, the State has repeatedly acknowledged the
2 existence of its obligation. For example, in 1994 the CSKT agreed to
3 assume jurisdiction over misdemeanor crimes by tribal members within the
4 Reservation and jurisdiction over such cases was transferred back to the
5 CSKT. The related Proclamation of the State of Montana issued at that
6 time began with the following recognition: "[T]he State of Montana obligated
7 itself to assume criminal jurisdiction over Indians on the Flathead Indian
8 Reservation in accordance with the consent of the United States given by
9 act of August 15, 1953" *State of Montana Proclamation*
10 (9/30/1994)(executed by Marc Racicot, Governor of Montana). Likewise,
11 the language now codified at Mont. Code Ann. § 2-1-301(1) has remained
12 unchanged.

13 13. The Reservation is the only reservation in Montana with Pub. L.
14 280 jurisdiction. Lake County is the most affected county in the State due to
15 the fact that most of the Reservation and the CSKT population resides in
16 Lake County.

17 14. Although the State purported to assume criminal law jurisdiction
18 over CSKT tribal members in 1965, it has in fact failed to satisfy its
19 obligation, instead leaving it to the local government unit, Lake County, to
20 provide and fund the vast majority of services necessary to the exercise of

1 Pub. L. 280 jurisdiction. Because the State itself lacks the infrastructure
2 and has not supplied adequate funding, Lake County and its taxpayers
3 were forced to incur costs, among them those for:

- 4 a. Prosecution of crimes;
- 5 b. Detention, prevention and suppression of crime;
- 6 c. Enforcement of criminal and traffic codes;
- 7 d. Youth placement and detention;
- 8 e. Costs of care including health care, food, lodging and other
9 incidentals for detainees;
- 10 f. Operation and maintenance of detention facilities; and
- 11 g. Personnel for detention, investigation, monitoring, prosecution,
12 and deputies, detectives and support staff; and transportation
13 costs of inmates to State and private mental health and
14 addiction facilities.

15 15. Since the CSKT's 1994 assumption of misdemeanor
16 jurisdiction, the CSKT has shouldered a considerable portion of the
17 financial burden associated with criminal jurisdiction over tribal members.
18 Upon information and belief, the CSKT currently spends over \$4
19 million/year to fulfill the exercise of criminal jurisdiction in misdemeanor
20 cases. The effect of its assumption has been a significant reduction of the
expense burden that would otherwise be borne by the State of Montana.
Nevertheless, the State's statutory obligation continues to apply in non-
misdemeanor cases. In 2017, the Legislature passed Senate Bill 310 at the
CSKT's request to create a means for it to withdraw from Pub. L. 280's
provisions if it chose to do so. To date, the CSKT has taken no action to

1 withdraw, thus continuing to leave Lake County to bear the cost of fulfilling
2 the State's Pub. L. 280 obligations as to felony crimes.

3 16. Additionally, the County's detention center is statutorily required
4 to receive all inmates committed to the detention center pursuant to the
5 State's assumption of Pub. L. 280 jurisdiction. See Mont. Code Ann. § 7-
6 32-2205.

7 17. Over the years, the cost of these services has increased by
8 many magnitudes. The aforementioned legislative testimony estimated the
9 cost (inclusive of misdemeanor jurisdiction) to be \$30,000-\$40,000 per year
10 in 1963. As will be explained below, the cost has now grown to over \$4.3
11 million per year for the exercise of felony jurisdiction alone.

12 18. During the 2017 Legislature, representative Greg Hertz
13 introduced HB 450, which would have required reimbursement to Lake
14 County from the Montana Department of Justice for net costs associated
15 with enforcing criminal jurisdiction on the Reservation. In conjunction with
16 the bill, the State prepared a fiscal analysis, a copy of which is attached as
17 Ex. 1 (the "Fiscal Analysis"). The Fiscal Analysis determined that the
18 estimated cost to reimburse Lake County would have been \$4.011 Million
19 in FY 2018, rising to \$4.383 Million by FY 2021.

20 19. During the 2021 Legislature, Representative Joe Read

1 introduced, and the Legislature passed, HB 656. The bill described itself as
2 "AN ACT REQUIRING COUNTY REIMBURSEMENT FOR ASSUMPTION
3 OF CRIMINAL JURISDICTION WITHIN THE FLATHEAD INDIAN
4 RESERVATION; . . . [and] PROVIDING AN APPROPRIATION" 2021
5 MT H.B. 656 (as adopted). The bill, as passed, stated that, "Unless the
6 Confederated Salish and Kootenai tribes or Lake County withdraws
7 consent to enforcement pursuant to 2-1-306, the state shall reimburse Lake
8 County for assuming criminal jurisdiction under this section annually to the
9 extent funds are appropriated by the Legislature. The annual amount of
10 reimbursement must be adjusted each year based on the consumer price
11 index." Mont. Code Ann. § 2-1-301(2).

12 20. Unfortunately, the State has not appropriated a meaningful sum
13 for this purpose. Specifically, it appropriated one dollar (\$1.00).

14 21. The original HB 656 bill draft also included a new section
15 providing for an appropriation of "\$2,191,621 from the general fund to the
16 department of justice in each year of the biennium beginning July 1, 2021,
17 to reimburse Lake County for assuming criminal jurisdiction within the
18 Flathead Reservation as required by 2-1-301." 2021 MT H.B. 656 (as
19 introduced). It went on to state, "The Legislature intends that the
20 appropriation be considered as part of the ongoing base for the next

1 legislative session.” *Id.* Although the appropriation *language* remained
2 identical in the bill as passed, the *dollar amount* of the appropriation was
3 reduced to one dollar (\$1.00).

4 22. In enacting HB 656, the State expressly recognized that Lake
5 County has been fulfilling the State’s obligation to assume criminal
6 jurisdiction within the Flathead Reservation. It further appeared to
7 recognize the State had the obligation to reimburse Lake County for the
8 County’s fulfillment of the State’s obligation. Yet, the amount appropriated--
9 \$1 -- was insignificant. Consequently, Lake County and its taxpayers were
10 left to continue fulfilling the State’s obligation without material financial
11 support from the State.

12 23. HB 656, as passed last year, also purports to allow Lake
13 County to withdraw its consent to enforce criminal jurisdiction on behalf of
14 the State over CSKT with six months’ notice. Mont. Code Ann. § 2-1-
15 306(3). However, if the county were to invoke this provision, it would leave
16 Lake County law enforcement in a state of chaos not unlike the “state of
17 chaos” described by Mr. Demures in his 1963 testimony, *supra*. Within
18 Lake County, the State lacks detention facilities, law enforcement
19 personnel, prosecutorial offices and many of the other fundamental
20 necessities that would be required to fulfill the obligations the State

1 assumed under Pub. L. 280. In the absence of Lake County's provision of
2 services, Montana citizens living and travelling through Lake County would
3 face a law enforcement vacuum of catastrophic proportions.

4 24. Further, consent withdrawal by Lake County would require it to
5 back out of Memorandum of Agreement ("MOA") between it, the State,
6 CSKT and several other counties and municipalities. The MOA exists for
7 the stated purpose of "provid[ing] for timely and effective law enforcement
8 and the protection of public safety." Given the degree of interaction and the
9 historical relationships between Lake County and CSKT, the county's
10 withdrawal of consent would have lasting and detrimental impacts on law
11 enforcement and public safety within the Reservation for CSKT members
12 and Lake County tribal and non-tribal residents alike. This in turn would
13 have detrimental and lasting negative impacts on public health and safety.
14 Thus, Lake County's withdrawal of consent presents a paradoxical Catch-
15 22, i.e., its residents must continue to fund a criminal justice obligation that
16 should by rights be borne by the State, or cease fulfilling the State's
17 obligation and suffer law enforcement chaos.

18 CAUSES OF ACTION

19 The following causes of action are pled as potential concurrent and/or
20 alternative causes of action. Some or all may apply, and the allegations are

1 not intended to be construed as mutually exclusive. Each cause of action
2 incorporates the applicable relevant allegations stated elsewhere in the
3 Complaint.

4 COUNT ONE: UNFUNDED MANDATE

5 25. Plaintiff restates the other allegations of this Complaint as if
6 fully set forth herein.

7 26. Pursuant to Mont. Code Ann. § 1-2-116(2)(a), a state agency
8 may not demand, bill, request or otherwise require a local government to
9 take certain actions including “pay[ing] for all or part of the administrative
10 costs of a program, activity or undertaking required by state law to be
11 carried out by a state agency.”

12 27. Pursuant to Mont. Code Ann. § 1-2-112, “a law enacted by the
13 legislature that requires a local government unit to perform an activity or
14 provide a service or facility that requires the direct expenditure of additional
15 funds and that is not expected of local governments in the scope of their
16 usual operations must provide a specific means to finance the activity,
17 service, or facility other than a mill levy.” Mont. Code Ann. § 1-2-112

18 28. A county is a local government entity within the meaning of the
19 statute. Mont. Code Ann. § 1-2-116(6)(b).

20 29. The Montana Department of Justice and Montana Department

1 of Corrections are state agencies within the meaning of Mont. Code Ann. §
2 1-2-116(6)(c). Other state agencies also perform services associated with
3 the exercise of criminal jurisdiction within the meaning of Mont. Code Ann.
4 § 1-2-116(6)(c).

5 30. In providing services and carrying out duties associated with
6 the exercise of criminal jurisdiction over CSKT members, Lake County is
7 paying for all or part of the administrative costs of programs, activities
8 and/or undertakings which state law, specifically Mont. Code Ann. § 2-1-
9 301(1) requires be carried out primarily by state agencies.

10 31. Further, the services being provided by Lake County in
11 fulfillment of felony criminal jurisdiction are not services that are normally
12 expected to be performed by a local government unit in Montana—as
13 evidenced by the fact that no other County or tribe in Montana operates
14 under Pub. Law 280 jurisdiction. This is a unique burden imposed on Lake
15 County alone.

16 32. Lake County has had no alternative but to carry out duties and
17 incur the costs associated with the State's assumption of Pub. L. 280
18 criminal jurisdiction within the Reservation because the State itself lacks
19 the infrastructure and personnel to effectively exercise criminal jurisdiction
20 over CSKT within the Reservation and has imposed these responsibilities

1 on Lake County. In failing to fulfill Pub. L. 280 obligations itself, the State
2 has "otherwise required" Lake County to provide services on behalf of the
3 State and thus has compelled Lake County to pay for nearly all costs
4 associated with the State's obligations pursuant to its assumption of
5 jurisdiction under Mont. Code Ann. § 2-1-301(1) and Pub. L. 280.

6 33. The State's failure to pay for the costs associated with Lake
7 County's provision of Pub. L. 280 services is a violation of the prohibition
8 on unfunded mandates contained in Mont. Code Ann. § 1-2-116(2) and § 1-
9 2-112(1).

10 34. The State renewed the MOA regarding law enforcement on the
11 Reservation on or about November 6, 2015. Since the MOA renewal date,
12 the State has failed to fund services associated with the exercise of Pub. L.
13 280 jurisdiction within Lake County which the State itself should rightfully
14 have funded.

15 35. Lake County, its residents and taxpayers have been damaged
16 by the State's violation of the prohibition on unfunded mandates.

17 36. Lake County is entitled to recover from the State the costs
18 incurred in fulfilling the State's unfunded mandate.

19 COUNT TWO: UNJUST ENRICHMENT

20 37. Plaintiff restates the other allegations of this Complaint as if

1 fully set forth herein.

2 38. By providing services in fulfillment of Pub. L. 280 jurisdiction
3 that the State would otherwise have had to provide, Lake County conferred
4 a benefit upon the State.

5 39. The State is and has been aware of the benefit it has received
6 by virtue of Lake County's provision of services. This is demonstrated most
7 recently by the aforementioned legislation specifically recognizing that the
8 Montana Department of Justice would otherwise have been obligated to
9 provide many of the services. The benefit to the State is also self-evident in
10 that the State was not required to operate a separate detention facility
11 within Lake County, or station adequate law enforcement and prosecutorial
12 personnel within its boundaries.

13 40. The burden imposed on Lake County is unique in that the
14 CSKT is the only tribe in Montana to have consented to Pub. L. 280
15 jurisdiction. Thus, the State's assumption of criminal law jurisdiction
16 imposes a unique and costly burden upon Lake County where most CSKT
17 members reside.

18 41. It is inequitable for Lake County to bear the burden and the
19 State to retain the benefit of Lake County's expenditures without
20 reimbursement to Lake County.

1 42. Lake County is entitled to restitution for the costs it incurred in
2 fulfilling the State's Pub. L. 280 obligations.

3 COUNT THREE: DECLARATORY JUDGMENT

4 43. Plaintiff restates the other allegations of this Complaint as if
5 fully set forth herein.

6 44. The purpose of the Montana Uniform Declaratory Judgments
7 Act is to settle and afford relief from uncertainty and insecurity with respect
8 to rights, status and other legal relations; It is to be liberally construed and
9 administered. Mont. Code Ann. § 27-8-102.

10 45. Lake County's rights, status or other legal relations are affected
11 by statutes, including Mont. Code Ann. § 2-1-301 et. seq.

12 46. Questions exist as to the State's obligations to fund Lake
13 County's services in fulfillment of Pub. L. 280 obligations assumed by the
14 State of Montana, and other related questions.

15 47. This Court has the power to declare rights, status and other
16 legal relations posed by the questions raised herein. These include, without
17 limitation, the question of whether the State has imposed an unfunded
18 mandate on Lake County in violation of Mont. Code Ann. § 1-2-116 and/or
19 whether the State otherwise has a responsibility to reimburse Lake County
20 for costs associated with exercise by Pub. L. 280 jurisdiction.

1 48. Lake County is entitled to declaratory relief determining that the
2 State is obligated to reimburse Lake County for such costs.

3 PRAYER FOR RELIEF

4 WHEREFORE, Plaintiff Lake County respectfully prays for the
5 following relief:

- 6 a. For an award of damages representing past and present costs
7 incurred by Lake County in fulfillment of the State of Montana's
8 obligations assumed under Pub. L. 280 and Mont. Code Ann. §
9 2-1-301(1);
- 10 b. For an award of restitution to Lake County representing the
11 past and present value of services it provided in fulfillment of
12 the State of Montana's obligations assumed by the state under
13 Pub. L. 280 and Mont. Code Ann. § 2-1-301(1);
- 14 c. For a declaratory judgment establishing the State's obligation to
15 reimburse Lake County for costs incurred in going forward in
16 fulfillment of the State of Montana's obligations assumed by the
17 state under Pub. L. 280 and Mont. Code Ann. § 2-1-301(1); and
- 18 d. For such further and other relief as this Court may deem just.

19 DATED this 14th day of July, 2022.

20 REEP, BELL & JASPER, P.C.

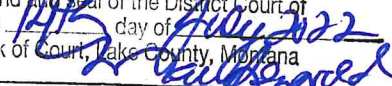
By: 

STATE OF MONTANA } ss
County of Lake

I hereby certify that the document to which this certificate is
affixed is a true, correct and compared copy of the original
on file in the office of the Clerk of the District Court.

WITNESS my hand and Seal of the District Court of
Lake County this 14th day of July, 2022

Lyn Fricker, Clerk of Court, Lake County, Montana

Court Seal By 
Deputy Clerk


Attorneys for Plaintiff